

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA, <u>ex rel.</u>)	
JAMES F. ALDERSON,)	
Plaintiffs,)	
)	
v.)	Case No. 99-413-CIV-T-23B
)	
QUORUM HEALTH GROUP, INC., <u>et al.</u> ,)	
)	
Defendants.)	

**PLAINTIFFS' RESPONSE TO DEFENDANTS BATON ROUGE HEALTH SYSTEM
LLC, QHG OF KENMARE, INC., QHG OF MINOT, INC., QHG OF SPRINGDALE,
INC., ST. JOSEPH HEALTH SYSTEM LLC, AND VICKSBURG HEALTHCARE,
LLC'S CONSOLIDATED MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

Defendants Baton Rouge Health System LLC, QHG of Kenmare, Inc., QHG of Minot, Inc., QHG of Springdale, Inc., St. Joseph Health System LLC, and Vicksburg Healthcare, LLC (collectively, the "Quorum Subsidiaries"), filed a consolidated motion to dismiss for failure to state a claim ("Quorum Subsidiaries' Motion"). For the reasons stated below, plaintiffs United States of America ("United States") and James F. Alderson ("Relator") (collectively, the "plaintiffs"), respectfully request the Court to deny this motion. In the event the Court converts this motion to a motion for summary judgment, pursuant to Fed.R.Civ.P. 12(b), plaintiffs request that they be permitted an adequate amount of time to conduct discovery upon the factual issues raised by the Quorum Subsidiaries' Motion.

MEMORANDUM OF LAW

The Quorum Subsidiaries are subsidiaries of defendant Quorum Health

Group, Inc. ("Quorum"), that recently acquired hospitals. Plaintiffs alleged in the Complaint that Quorum followed its company-wide cost-reporting policies and practices, which include the filing of a Medicare cost report, for all of its owned hospitals. Complaint ¶ 316. Thus, for the reasons stated in Plaintiffs' Response to Defendants' Rule 12(b)(6) and Rule 9(b) Consolidated Motions to Dismiss in Response to Plaintiffs' Complaint, filed this day, the Complaint states a claim upon which relief may be granted against the Quorum Subsidiaries.

The Quorum Subsidiaries raise a further issue in the present motion to dismiss. The Quorum Subsidiaries assert that they "have never submitted cost reports." See Quorum Subsidiaries' Motion, page 2. In support of this assertion, the Quorum Subsidiaries rely upon the declaration of Edwin J. Warren, a Quorum vice president. Thus, the Quorum Subsidiaries' Motion challenges the factual allegations contained in the Complaint. This is contrary to the well-settled rule that in considering a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Court must take as true the allegations of the Complaint and construe them in favor of the plaintiffs. Oladeinde v. City of Birmingham, 963 F.2d 1481, 1486 (11th Cir. 1992), cert. denied, 507 U.S. 987 (1993). Because the Quorum Subsidiaries' Motion fails to meet Fed.R.Civ.P. 12(b)(6) requirements, by not taking the allegations as true and by relying upon assertions of fact outside the Complaint, the motion should be denied.

In a footnote, the Quorum Subsidiaries suggest, but do not request, that the Court may convert this motion to a Rule 56 motion for summary judgment. See

Quorum Subsidiaries' Motion, page 4 n. 4. The Quorum Subsidiaries state that no discovery is required. Id. In the event that the Court wishes to convert this motion, plaintiffs request that they be provided an adequate amount of time to conduct discovery related to these factual issues. Contrary to the Quorum Subsidiaries' assertions, discovery is necessary. Frequently, the full identity and employer of the cost report preparer cannot be determined from the face of the filed cost report alone. Thus, plaintiffs require discovery in order to test the assertions of fact made in the declaration attached to the Quorum Subsidiaries' Motion.

CONCLUSION

For the reasons stated above, plaintiffs respectfully request that the Court deny the Quorum Subsidiaries' Motion. In the event the Court converts this motion to a motion for summary judgment, pursuant to Fed.R.Civ.P. 12(b), plaintiffs request that they be permitted an adequate amount of time to conduct discovery upon the factual issues raised by the Quorum Subsidiaries' Motion.

Respectfully submitted,

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